

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4526 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

FATMA BAI WD/O SIPAI NAJUBHAI HASANBHAI

Versus

SPL. SECRETARY, REVENUE DEPT. & OTHERS

Appearance:

MR MB FAROOQUI for the Petitioner
MR NIGAM SHUKLA for Respondents no.1, 2 & 3
None present for Respondent no.4.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09 /09/96

C.A.V. JUDGEMENT

1. Heard learned counsel for the petitioner. The challenge is made by the petitioner in this Special Civil Application to the orders made by respondents no.1, 2 and 3 in connection with the land bearing Survey no.133 of Village Lalawada Tal. Kheralu, Dist. Mehsana.

2. The petitioner has come up with a case that she is an agriculturist of the village Lalawada of Dist. Mehsana and she is in possession of the land bearing

Survey No.133 admeasuring 1 acre and 39 gunthas and cultivating the same. This land is only said to her source of livelihood. The land in question was purchased by her deceased husband Sipai Naju Hasan in the year 1965 by registered sale deed for Rs.400/-. Her husband died in the year 1975 and thereafter the petitioner is personally cultivating the said land. In Pahani Patrak, the land records, the name of the petitioner is shown as owner of the land in question. After purchasing the said land, the husband of the petitioner made lot of improvement on the said land by spending a huge amount. In the month of June, 1979, the petitioner for the first time came to know about the fact that previously the Collector, Mehsana had passed an order in the year 1968 declaring the said sale transaction dated 23-9-1965 as illegal and imposed a fine of Rs.40/-. The petitioner has complained that the proceedings in the year 1968 were held ex parte and no notice was issued to the petitioner or her husband. In previous inquiry under sec. 9 of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, the Collector Mehsana only imposed a fine and no order regarding the eviction of the petitioner from the land in question or for handing over the possession thereof was passed. The Collector vide its order dated 23rd April, 1979 directed the petitioner to hand over the possession of the land to respondent no.4. The petitioner no.4 is the person whom the petitioner's husband purchased the land in the year 1965 by registered sale deed. Against the order of the Collector, Mehsana dated 23rd April, 1979, the petitioner had preferred a Revision Application before the respondent no.1. The matter was remanded back to the Collector with the direction to decide the same after giving an opportunity of hearing to the petitioner. On 5-5-1981 on remand, the Collector has passed the order of eviction of the petitioner from the land in question. The petitioner filed a revision application again before the Government, but that too has been dismissed. Hence, this Special Civil Application.

3. The learned counsel for the petitioner made two fold submissions in the present case. Firstly, he contended that when earlier in 1968, the Collector only imposed the penalty of Rs.40/- and no order of eviction was passed, he could not have reviewed that order and passed the order of eviction of the petitioner. It has next been contended that the land in question was never declared fragment in the revenue record. Under sec. 6(2) of the Act, the issue of notice of declaring the land to be fragment was mandatory but such a notice was not given in the present case. In the absence of such

notice which is mandatory, the sale of the land could not have been declared to be illegal and no order of the eviction could have been passed. In support of his contention, the learned counsel places reliance on the decision of the Bombay High Court in the case of Putalabai Lakhu Pawar & Ors. V/s. Shiva Dhondi Pawar reported in A.I.R. 1981 Bombay, Page 9.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. Sec. 6 of the Act provides that the notification of standard area under Sub-section 3 of Section 5 for local area or fragments in the local area shall be entered as such in the record of rights or where there is no record of rights in such village record as the State Government may prescribe. Sub-section 2 of section 6 provides that the notice of every entry made in Sub-section 1 shall be made in the manner prescribed for giving of the notice under relevant code of entry in register of mutation. Section 7 of the Act put a restriction on the transfer of any fragment in respect of which the notice has been given under Sub-section 2 of Section 6 except to the owner of a contiguous survey number or recognised sub division of a survey number. The bar of the transfer of the fragment under section 7 will apply where the notice under Sub-section 2 of section 6 is issued. Before issuing of the notice under Sub-section 2 of section 6 all the further requirements of law has been clearly given out in Sub-section 1 of section 6.

5. Reply to the writ petition has not been filed. In the absence of the reply the facts stated by the petitioner that notice under Sub-section 2 of Section 6 of the Act, was not given stands uncontroverted. The respondents have not come up with a case that there was notification of restricted area under Sub-section 3 of Section 5 for a local area i.e. area where this land is situated and all the fragments including the fragment of the land in question has been entered in the record of the right. Sub-section 2 puts an obligation that notice of every entry made under sub-section 1 shall also be given in the manner prescribed for under the relevant code of entry in register of mutation. This notice was also not given. The petitioner has made a categorical statement in this respect which is a question of fact, but the same has not been controverted by the respondent. So the contentions made by learned counsel for the petitioner have sufficient merits.

6. In the result, this Special Civil Application

succeeds and the same is allowed. The order of the respondent no.1 dated 18-9-1981 made in revision application no.91 of 1981 is set aside. The order of respondent no.2 dated 5-5-1981 of the Collector, Mehsana confirmed by the respondent no.1 is also set aside. Before parting with the case I may constrain to observe that the order of the Collector, Mehsana has not been filed by the petitioner in this Special Civil Application. That was the order against which the petitioner was aggrieved and it has been prayed to be quashed the same but the same has not been filed. In absence of the order, the Court is not in a position to quash the same. But that order is merged in the order of respondent no.1, and as such, in the interest of justice this Court has passed the order of quashing of the same, more so when the matter proceeds only on the legal question.

zgs/-